

KEYWORD: Financial

DIGEST: Applicant has a history of financial problems. He made a good-faith effort to resolve his financial problems by refinancing his home and paying or settling about \$30,000 in debt. He presented sufficient information to explain, extenuate, or mitigate the security concern. Eligibility for a security clearance is granted.

CASENO: 07-02503.h1

DATE: 08/30/2007

DATE: August 30, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 07-02503
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

John Bayard Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems. He made a good-faith effort to resolve his financial problems by refinancing his home and paying or settling about \$30,000 in debt. He presented sufficient information to explain, extenuate, or mitigate the security concern. Eligibility for a security clearance is granted.

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### **STATEMENT OF THE CASE**

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on May 11, 2007. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges a security concern under Guideline F for financial considerations. The SOR alleges eight delinquent accounts for about \$33,000 in total.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.<sup>2</sup> The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

On May 31, 2007, Applicant replied to the SOR and requested a hearing. The case was assigned for hearing on June 27, 2007. The hearing took place as scheduled on August 8, 2007, and the transcript was received on August 20, 2007.

The record was kept open to allow Applicant to submit additional documentary evidence. On August 22<sup>nd</sup>, Applicant made a timely submission and those matters (a fax cover sheet plus eight one-page documents) were forwarded to me by department counsel who voiced no objections. The matters are marked and admitted as Exhibit E.

### **FINDINGS OF FACT**

Applicant admitted all indebtedness in his reply to the SOR. He indicated that he was in the process of refinancing his home to obtain the necessary funds to resolve the debts and hoped to do

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<sup>1</sup> Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

<sup>2</sup> See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

so by June 30, 2007. In addition to his admissions and explanation, the following facts are established.

Applicant is a 56-year-old training analyst and property manager working for a contractor that provides services to the U.S. Army. He has worked for his current employer since March 2004. He has worked as a contractor for about the last 15 years.

From 1968 to 1992, Applicant served on active duty in the Army working in signals intelligence. He rose through the enlisted ranks to the rank of sergeant first class. He was then advanced to the position of warrant officer for his last four years of service when he retired as a chief warrant officer two.

He has been married for nearly 36 years and has two adult children. His wife is not employed outside the home. She suffers from bipolar disorder and depression and work became too much for her.

Applicant has held a security clearance for many years as a soldier and a civilian employee. He is seeking to retain a security clearance for his current employment.

Applicant has a history of financial problems. Indeed, a credit report from 2001 reflects seven accounts in a collection or charged-off status (Exhibit 5). The SOR alleges that Applicant has eight unpaid debts ranging from \$40 to \$14,143 for a total of approximately \$33,000. The indebtedness is based on collection accounts (two) and charged-off accounts (six). Seven of the eight debts appear to have originated from credit card accounts.

Applicant has paid in full or settled all the debts alleged in the SOR (Exhibits A, B, C, D, E, and Applicant's testimony). He was able to do so by refinancing his home in June 2007. His home had a market value of about \$220,000 and he owed about \$87,000 (between a mortgage loan and a line of credit). He refinanced for about \$135,000, and he received about \$36,000 after payment of closing costs, fees, and one of the delinquent debts. His checking account statement reflects a deposit of \$35,828.81 on June 29, 2007 (Exhibit B at 1). Applicant then used the money to pay or settle the other debts.

In total, he spent approximately \$30,000 to pay or settle the eight debts. As of August 3, 2007, his checking account had a balance of \$8,850. His monthly mortgage payment is now about \$100 less than he was previously paying on the mortgage and line of credit. Based on his retirement pay from the Army, and his current income and expenses, Applicant and his wife have a positive monthly cash flow and they are living within their means. He has about \$16,000 in a 401(k) retirement account, which is the extent of his financial assets other than his home.

Applicant attributes the debts to bad management by him and his wife. Also, he believes a former son-in-law may have run up some of the credit card accounts, but does not have solid proof.

## **GENERAL PRINCIPLES OF LAW AND POLICIES**

No one has a right to a security clearance.<sup>3</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>4</sup> A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>5</sup> An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level and retention of any existing security clearance.<sup>6</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>7</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>8</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>9</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup> In *Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.<sup>11</sup> The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>12</sup>

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination

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<sup>3</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (“It is likewise plain that there is no ‘right’ to a security clearance, so that full-scale due process standards do not apply to cases such as *Duane*’s.”).

<sup>4</sup> *Egan*, 484 U.S. at 531.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 531.

<sup>12</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

of an applicant's loyalty.<sup>13</sup> Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

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## **CONCLUSIONS**

Under Guideline F for financial considerations,<sup>14</sup> a security concern typically exists due to significant unpaid debts. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record evidence supports a conclusion that Applicant has a history of financial problems. His history of financial problems is a security concern because it indicates inability or unwillingness to satisfy debts<sup>15</sup> and a history of not meeting financial obligations<sup>16</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions.

Applicant receives credit in mitigation. The most pertinent mitigating condition is the fourth MC<sup>17</sup> of Guideline F, because Applicant has made a good-faith effort to repay or settle the eight debts. His good-faith effort is established by his actions. In 2007, he refinanced his most valuable asset and spent about \$30,000 in home equity to pay or settle the debts. And unlike many applicants in financial cases, Applicant has corroborated his testimony by providing documentary proof of payment or settlement of the debts. He has cleaned up his financial house, has cash left over, and is otherwise living within his means. Although he can be faulted for taking too long to address his indebtedness, there are no concerns about his current financial situation. Indeed, the refinancing actually lower his total monthly housing payment. Taken together, these circumstances are sufficient to qualify for initiating a good-faith effort within the meaning of the guideline.

Based on the record evidence as a whole, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Likewise, he has met his ultimate burden of persuasion to obtain a favorable clearance decision.

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## **FORMAL FINDINGS**

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<sup>13</sup> Executive Order 10865, § 7.

<sup>14</sup> Revised Guidelines at 13–14 (setting forth the disqualifying and mitigating conditions).

<sup>15</sup> DC 1 is “inability or unwillingness to satisfy debts.”

<sup>16</sup> DC 3 is “a history of not meeting financial obligations.”

<sup>17</sup> MC 4 is “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

\_\_\_\_\_ SOR ¶ 1–Guideline F:

For Applicant

Subparagraphs a–h:

For Applicant

**DECISION** \_\_\_\_\_

\_\_\_\_\_ In light of all the circumstances, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eligibility for a security clearance is granted.

Michael H. Leonard  
Administrative Judge